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ORACLE AMERICA, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.

Plaintiff,

v.

GOOGLE INC.

Defendant.

Case No. CV 10-03561 WHA

**DECLARATION OF ANDREW
TEMKIN RE: GOOGLE'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL (ECF NOS. 1560, 1575)**

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

1 I, Andrew Temkin, declare and state as follows:

2 1. I am an attorney employed by Oracle America, Inc. ("Oracle"). My current title is
3 Senior Corporate Counsel. One of my responsibilities is supervising Oracle's outside counsel
4 with respect to litigation matters, including Oracle's lawsuit against Google. I am familiar with
5 Oracle's policies and business practices, including what information Oracle considers confidential
6 and does not disclose to the public.

7 2. I submit this declaration pursuant to Civil Local Rule 79-5(e) in connection with
8 Google's Administrative Motion to File Under Seal, ECF No. 1560. I have personal knowledge
9 of the facts set forth herein, and if called upon as a witness, I could testify to them competently
10 under oath.

11 **January 8, 2016 Malackowski Report, Bayley Decl. Exhibit F (ECF No. 1560-12)**

12 3. The last sentence of Paragraph 191 of Dr. Malackowski's January 8, 2016 report
13 discusses the amount of revenue earned by Oracle in connection with the current and preceding
14 Java-related licensing agreements between Oracle and Samsung. The amount of money paid by
15 Samsung to Oracle is information Oracle considers highly confidential and Oracle has always
16 treated this information as such. Oracle does not disclose this information to the public and
17 restricts knowledge of this information within Oracle to a subset of persons who need the
18 information for their business operations. Disclosure to the public and to Oracle's competitors of
19 the amount of money paid by Samsung to Oracle could harm Oracle. Harm to Oracle could
20 include, among other things, an adverse impact on Oracle's ability to negotiate licenses for Java
21 products because other Oracle partners may use the Samsung payment information as leverage
22 against Oracle during negotiations. Oracle submits that the risk of competitive harm that would
23 be created by public disclosure of this information amounts to a compelling reason to grant
24 Oracle the narrow sealing order requested herein.

25 4. Figures 24 and 25 of Dr. Malackowski's January 8, 2016 report reflect actual Java
26 ME licensing revenue for each year from 2009 through 2015. Oracle's annual revenue
27 information for specific lines of Java business is confidential and has always been treated as such.
28 Oracle does not disclose annual revenue information for Java ME to the public and restricts

1 knowledge of this information within Oracle to a subset of persons who need the information for
2 their business operations. Disclosure to the public and to Oracle's competitors of recent annual
3 revenue information could harm Oracle by giving competitors insight into competitive
4 information that would otherwise remain confidential. I understand that the Court has expressed
5 the view that information that is more than two years old will generally not be subject to sealing.
6 Accordingly, Oracle requests that that the actual and lost revenue data for 2014 and 2015
7 reflected in Figures 24 and 25 remain under seal. Oracle submits that the risk of competitive
8 harm that would be created by public disclosure of this information amounts to a compelling
9 reason to grant Oracle the narrow sealing order requested herein.

10 5. Figures 26 and 27 of Dr. Malackowski's January 8, 2016 report reflect Oracle's
11 Java ME revenues, incremental licensing expenses, and expenses as a percentage of revenue for
12 each year from 2011 to 2015 and 2009 to 2015, respectively. Figure 28 also reflects Oracle's
13 annual Java ME incremental licensing expenses. Oracle does not disclose annual incremental
14 licensing expenses or expenses as a percentage of revenue for Java ME to the public and restricts
15 knowledge of this information within Oracle to a subset of persons who need the information for
16 their business operations. Disclosure to the public and to Oracle's competitors of this information
17 could harm Oracle by giving competitors insight into competitive information that would
18 otherwise remain confidential and by impacting Oracle's ability to negotiate licenses for Java
19 products. Oracle requests that the data in Figures 26, 27, and 28 for 2014 and 2015 remain under
20 seal. Oracle submits that the risk of competitive harm that would be created by public disclosure
21 of this information amounts to a compelling reason to grant Oracle the narrow sealing order
22 requested herein.

23 6. Exhibit 12 to Dr. Malackowski's January 8, 2016 report reflects Oracle's Java ME
24 incremental licensing expenses for each year from 2009 to 2015. As discussed above, this
25 information is treated as highly confidential by Oracle, and public dissemination of this
26 information could cause competitive harm to Oracle. Oracle requests that the data in Exhibit 12
27 for 2014 and 2015 remain under seal. Oracle submits that the risk of competitive harm that
28 would be created by public disclosure of this information amounts to a compelling reason to grant

1 Oracle the narrow sealing order requested herein.

2 7. Exhibit 12. 1 to Dr. Malackowski's January 8, 2016 report reflects calculations of
3 Oracle's incremental expenses for each year from 2009 to 2015. This is information that Oracle
4 does not disclose to the public, and Oracle restricts knowledge of this information within Oracle
5 to a subset of persons who need the information for their business operations. Disclosure to the
6 public and to Oracle's competitors of this information could harm Oracle by giving competitors
7 insight into competitive information that would otherwise remain confidential. Oracle requests
8 that the incremental expense data in Exhibit 12.1 for 2014 and 2015 remain under seal. Oracle
9 submits that the risk of competitive harm that would be created by public disclosure of this
10 information amounts to a compelling reason to grant Oracle the narrow sealing order requested
11 herein.

12 8. Exhibit 12.2 to Dr. Malackowski's January 8, 2016 report reflects Oracle's actual
13 Java ME licensing revenues for each year from 2009 through 2015. For the reasons discussed
14 above, Oracle requests that the data in Exhibit 12.2 for 2014 and 2015 remain under seal.

15 9. Exhibit 12.4 to Dr. Malackowski's January 8, 2016 report reflects Oracle's
16 licensing revenues for Java ME and Embedded ME and Java ME year over year growth for each
17 year from 2009 through 2015. For the reasons discussed above, Oracle requests that the data in
18 Exhibit 12.4 for 2014 and 2015 remain under seal.

19 10. Exhibit 12.6 to Dr. Malackowski's January 8, 2016 report reflects Oracle's
20 licensing revenues and expenses for specific Java lines of business for each year from 2009
21 through 2015. As discussed above, revenue and expense information for specific Java business
22 lines is highly confidential. Oracle requests that the data in Exhibit 12.6 for 2014 and 2015
23 remain under seal.

24 11. Exhibit 12.9 reflects Oracle's Java licensing operating costs from 2013 to 2015.
25 Oracle's Java licensing operating costs is information that Oracle does not disclose to the public,
26 and Oracle restricts knowledge of this information within Oracle to a subset of persons who need
27 the information for their business operations. Disclosure to the public and to Oracle's
28 competitors of this information could harm Oracle by giving competitors insight into competitive

information that would otherwise remain confidential and by impacting Oracle's ability to negotiate licenses for Java products. Oracle requests that the data in Exhibit 12.9 for 2014 and 2015 remain under seal. Oracle submits that the risk of competitive harm that would be created by public disclosure of this information amounts to a compelling reason to grant Oracle the narrow sealing order requested herein.

February 29, 2016 Malackowski Report, Bayley Decl. Ex. G (ECF No. 1560-13)

12. Exhibits 12 through 12.10 to Dr. Malackowski's February 29, 2016 report are the same as exhibits 12 through 12.10 to Dr. Malackowski's January 8, 2016 report. For the reasons explained above, Oracle requests that the data for 2014 and 2015 reflected in Exhibits 12, 12.1, 12.2, 12.4, 12.6, and 12.9 remain under seal.

February 8, 2016 Jaffe Report, Bayley Decl. Ex. A (ECF No. 1560-7 and 1560-8)

13. The following portions of Dr. Jaffe's February 8, 2016 report discuss revenues earned by Oracle pursuant to its current and preceding license agreements with Samsung. As discussed above, the amount of money Oracle received under its current and preceding Java-related license agreements with Samsung is confidential, and Oracle requests that this information remain under seal:

- The first bullet point of paragraph 301
- The first row of information in Table 7 (page 143)
- The dollar amounts found in the sixth quote beginning with the words "So Samsung" and ending with the word "Android" on page 1 of Exhibit 22

14. Page 13 and the first bulleted statement on page 14 of Exhibit 22 of Dr. Jaffe's February 8, 2016 report reflect 2015 and 2016 revenue estimates for various Internet of Things sectors. These revenue estimates are based on, among other factors, confidential Oracle business information. Oracle does not disclose these types of revenue estimates to the public and restricts knowledge of this information within Oracle to a subset of persons who need the information for their business operations. Disclosure to the public and to Oracle's competitors of this information could harm Oracle by giving competitors insight into competitive information that would otherwise remain confidential and by impacting Oracle's ability to negotiate licenses for Java

1 products. Oracle submits that the risk of competitive harm that would be created by public
2 disclosure of this information amounts to a compelling reason to grant Oracle the narrow sealing
3 order requested herein.

4 **Ringhofer December 2, 2015 Deposition Excerpts, Karwande Decl. Ex. 9 (ECF No. 1560-4)**

5 15. Lines 12-19 on page 69 of the December 2, 2015 deposition transcript of Mr.
6 Michael Ringhofer discuss the specific amounts of payments by Samsung to Oracle in connection
7 with licensing agreements between Oracle and Samsung. As discussed above, the amount of
8 money owed to Oracle under its current and preceding Java-related license agreements with
9 Samsung is confidential, and Oracle requests that this information remain under seal.

1 I declare under penalty of perjury under the laws of the State of California and the United
2 States of America that the foregoing is true and correct to the best of my knowledge.

3 Executed this 28rd day of March, 2016, at San Francisco, CA.

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6 Andrew Temkin
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